

)	
JOSEPH WOLSKI and CHRISTINA)	
WOLSKI,)	
Plaintiffs,)	
)	
v.)	
)	
GARDNER POLICE DEPT.,)	
LIEUTENANT ERIC MCAVENE,)	
Individually and as employee of)	
GARDNER POLICE DEPT.)	
)	
MASSACHUSETTS STATE POLICE)	C.A. 1:18-CV-12631-WGY
DEPT., DETECTIVE DAN WILDGRUBE,)	
Individually and as employee of)	
MASSACHUSETTS STATE POLICE)	
DEPT.)	
TROOPER MICHAEL TRAVERS,)	
Individually and as employee of)	
MASSACHUSETTS STATE POLICE)	
DEPT.)	
TROOPER MATTHEW PRESCOTT,)	
Individually and as employee of)	
MASSACHUSETTS STATE POLICE)	
DEPT.)	
Defendants.)	
)	

The Defendant Massachusetts State Police Department (“State Police”), pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, hereby submits its motion to dismiss the Plaintiffs’ First Amended Verified Complaint against the State Police in the above-captioned action. Plaintiffs Joseph and Christina Wolski allege state law claims against the State Police; specifically, a negligence tort claim pursuant to G.L. c. 258 (Count III) and an intentional

infliction of emotional distress claim (Count V). As set forth more fully in the accompanying memorandum of law, both claims against the State Police should be dismissed because: (1) this Court has no jurisdiction to adjudge Plaintiffs' tort claims against a department of the Commonwealth under the Eleventh Amendment; (2) the Plaintiffs failed to make presentment as required by the Massachusetts Tort Claims Act; and (3) the Commonwealth has not waived its sovereign immunity under the Massachusetts Tort Claims Act for intentional torts.

CONCLUSION

For the foregoing reasons, Defendant State Police respectfully requests that this Court dismiss all counts against the State Police with prejudice.

MASSACHUSETTS STATE POLICE,

By its Attorneys,

MAURA HEALEY
ATTORNEY GENERAL

/s/Nicole Eldredge
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Date: May 10, 2019

LOCAL RULE 7.1 CERTIFICATE

Pursuant to Local Rule 7.1, I certify that as counsel for the Defendant Massachusetts State Police Department, I have conferred with Plaintiffs' counsel, who informed me that the Plaintiffs do not assent to the relief requested in this motion.

/s/Nicole Eldredge_____
Assistant Attorney General
Trial Division

CERTIFICATE OF SERVICE

I, Nicole Eldredge, Assistant Attorney General, hereby certify that on May 10, 2019, this document filed through the ECF system will be sent electronically to the registered participants as identified on the notice of electronic filing (NEF) and paper copies will be sent to those indicated as non-registered participants by first class mail, postage prepaid.

/s/Nicole Eldredge_____
Assistant Attorney General
Trial Division